

EXHIBIT B

Exhibit B

In The Matter Of:

*Eli Mistovich, Jr. v.
Elizabeth Bowden, et al.*

*Elizabeth R. Bowden
Vol. 1, September 27, 2005*

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Word Index included with this Min-U-Script®

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[1] Eli Mistovich. Have you ever been deposed before in
[2] any deposition?
[3] A: No.
[4] Q: I will be asking you some questions. I'd
[5] ask you to wait until I finish the question before
[6] you answer, so the stenographer can take everything
[7] down. And also if the answer is "yes" or "no,"
[8] please don't nod your head. Please just say "yes"
[9] or "no" — it's common things that people do in
[10] depositions — so we can get the answer.
[11] If you don't understand any of my
[12] questions, just state it, and I'll be happy to
[13] rephrase it. And if you want to take a break at any
[14] time, you just so indicate. Okay?
[15] A: Okay.
[16] Q: Would you state your full name for the
[17] record.
[18] A: Elizabeth Rose Bowden.
[19] Q: And what's your home address?
[20] A: 48 Spencer Crescent, Guelph, Ontario,
[21] Canada, N1L1M2.
[22] Q: And how old are you?
[23] A: Forty-six.
[24] Q: Okay. And are you married?

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[1] A: P-a-t-h-e-o-n.
[2] Q: And where is Patheon located?
[3] A: Mississauga, Ontario.
[4] MR. TEAGUE: Off the record.
[5] (Discussion off the record)
[6] Q: What's the nature of the business of
[7] Patheon?
[8] A: Contract pharmaceutical.
[9] Q: Would you explain what that means.
[10] A: They either produce or research
[11] pharmaceutical products for other pharmaceutical and
[12] biotech companies.
[13] Q: And what is your position with Patheon?
[14] A: Director of human resources.
[15] Q: And how long have you been with Patheon?
[16] A: Two months.
[17] Q: And what was your next previous employment
[18] before Patheon?
[19] A: MassBay Commuter Railroad Company.
[20] Q: And during what time period were you
[21] employed by — we'll call it "MBCR" for shorthand
[22] for this deposition.
[23] A: Okay.
[24] Q: During what time period were you employed

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[1] A: No.
[2] Q: Are you a college graduate?
[3] A: You'll have to explain. American or
[4] Canadian? I apologize.
[5] Q: Are you a citizen of Canada?
[6] A: Yes.
[7] Q: Would you describe your educational
[8] background.
[9] A: I have a university degree, bachelor of
[10] arts degree from the University of Guelph.
[11] Q: And what year did you receive that?
[12] A: 2004.
[13] Q: And what was your major field of study?
[14] A: It's a general arts degree.
[15] Q: And any other — any post-university
[16] education?
[17] A: Post-graduate?
[18] Q: Yes.
[19] A: No.
[20] Q: Are you presently employed?
[21] A: Yes.
[22] Q: And by whom are you presently employed?
[23] A: Patheon.
[24] Q: Would you spell that.

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[1] at MBCR?
[2] A: From September 2003 to July 2005.
[3] Q: And what were the circumstances under which
[4] you left the MBCR?
[5] A: I tendered my resignation.
[6] Q: At the time you tendered your resignation,
[7] were you given a choice of resigning or termination?
[8] A: No.
[9] Q: So it was a completely voluntary
[10] resignation?
[11] A: Yes.
[12] Q: And what was your position during your
[13] employment at MBCR?
[14] A: Manager of organizational development.
[15] Q: And what were the duties of that position?
[16] A: To lead and coordinate the primarily human
[17] resources functions.
[18] Q: And were you the manager of organizational
[19] development during the entire almost two-year period
[20] that you were with MBCR?
[21] A: Yes.
[22] Q: Okay. Were you an employee, considered an
[23] employee of MBCR?
[24] A: During that period, yes.

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[1] A: No, I did not.
 [2] Q: Okay. And do you recall that Mr. Mistovich
 [3] was terminated from his position at MBCR back in
 [4] March of 2004?
 [5] A: Yes.
 [6] Q: And do you know how long sitting here today
 [7] Mr. Mistovich worked at MBCR before he was
 [8] terminated?
 [9] A: He was hired July 1st, 2003.
 [10] Q: Did you have any participation in the
 [11] hiring of Eli Mistovich?
 [12] A: Could you describe "hiring."
 [13] Q: You said he was hired July 1st of 2003.
 [14] What did you mean by the word "hiring" or "hire"?
 [15] A: He — Amtrak employees that were employed
 [16] in approximately March of 2002 were offered
 [17] employment with MBCR as outlined in the terms and
 [18] conditions of the operating agreement between MBCR
 [19] and the MBTA. Mr. Mistovich would have received the
 [20] letter that all those eligible received.
 [21] Q: Okay. Do you recall what Mr. Mistovich's
 [22] job title was when he was hired at MBCR?
 [23] A: No, I do not.
 [24] Q: Okay. Do you know what his

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[1] A: No.
 [2] Q: Other than that do you recall any other
 [3] contacts with Mr. Mistovich?
 [4] A: Not specific conversations that I've had.
 [5] Q: Did you have an understanding as to whether
 [6] or not Mr. Mistovich had any supervisory
 [7] responsibilities over other employees at MBCR?
 [8] A: Could you restate that, please?
 [9] Q: Yes. Was it your understanding that Mr.
 [10] Mistovich had supervisory authority over other
 [11] employees at MBCR?
 [12] A: Yes.
 [13] Q: And do you know how many employees he
 [14] supervised?
 [15] A: No, I do not.
 [16] Q: Do you know what department he worked in?
 [17] A: Engineering.
 [18] Q: Engineering. And was there a separate
 [19] subdepartment that Mr. Mistovich was involved in, to
 [20] your knowledge?
 [21] A: Yes.
 [22] Q: And what was that?
 [23] A: Track.
 [24] Q: And do you know what the — do you recall

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[1] responsibilities were as —
 [2] A: Specifically, no.
 [3] Q: Okay. Between July of 2003 and his
 [4] termination in March of 2004, did you have any
 [5] interaction with Mr. Mistovich other than the
 [6] "termination incident," I'll call it, while he
 [7] worked at MBCR?
 [8] A: When you mean "interaction," you mean any
 [9] contact whatsoever?
 [10] Q: Yes.
 [11] A: Yes.
 [12] Q: And what contact do you recall you had with
 [13] him?
 [14] A: He was in the board room one day with a
 [15] group of other people, and I remember speaking
 [16] specifically to him.
 [17] Q: Do you recall what the subject of the
 [18] discussion was?
 [19] A: More just "Hello." In the sense that my
 [20] position in the room, as I tried to leave, I had to
 [21] ask him to push his chair in, and we said, "Hello,"
 [22] and "How are you?"
 [23] Q: You didn't discuss anything substantively
 [24] having to do with employment, I take it?

[1] what the responsibilities of, I'll call it, the
 [2] Track Department were?
 [3] A: No, I don't.
 [4] Q: Do you know if Mr. Mistovich had any
 [5] dealing with union employees while he worked at
 [6] MBCR?
 [7] A: Yes.
 [8] Q: And do you recall if Mr. Mistovich was a
 [9] member of a union?
 [10] A: I have no idea.
 [11] Q: Okay. You don't know whether he was
 [12] management or union?
 [13] A: He was classified as a salaried employee.
 [14] Q: Okay.
 [15] A: I don't know if he was a member of a union.
 [16] Q: Do you know if Mr. Mistovich supervised
 [17] union employees while he was at MBCR?
 [18] A: Directly or indirectly?
 [19] Q: No, directly.
 [20] A: I don't know that.
 [21] Q: How about indirectly?
 [22] A: Yes.
 [23] Q: And what was your understanding of his
 [24] supervisory authority?

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[1] any actions as head of Human Resources functions at
[2] MBCR?
[3] A: As a result of the meeting, no.
[4] Q: Other than these two meetings, did you have
[5] any other discussions face to face or by telephone
[6] with City Councilor Turner concerning the makeup of
[7] the MBCR workforce?
[8] A: Not to my knowledge.
[9] Q: Did you have any written communications
[10] with City Councilor Turner either from him to you or
[11] you to him?
[12] A: No.
[13] Q: Do you recall having discussions with any
[14] other representative of the City of Boston about the
[15] makeup of the MBCR workforce prior to March of 2004?
[16] A: No knowledge at all.
[17] Q: After the first meeting with Councilor
[18] Turner, did you attend any meeting with Kevin Lydon
[19] at which Councilor Turner's concerns were discussed?
[20] A: None that I can recall.
[21] Q: After Alison Leaton was contracted to
[22] become a recruiter, did you have discussions with
[23] her about hiring minorities or recruiting minorities
[24] for employment at MBCR?

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[1] Leaton?
[2] A: Yes.
[3] Q: And the top portion of Exhibit 5 would Ms.
[4] Leaton's reply to you at about 4:56 p.m., correct?
[5] A: Yes.
[6] Q: Before sending this e-mail to Ms. Leaton on
[7] March 11, did you have a conversation with her?
[8] A: Yes.
[9] Q: Okay. And was this a telephone
[10] conversation or face-to-face conversation?
[11] A: Face to face.
[12] Q: Okay. And where did that occur?
[13] A: In my office.
[14] Q: Okay. What was the occasion of her coming
[15] to your office, if you remember?
[16] A: I do not remember.
[17] Q: And what do you recall Ms. Leaton saying to
[18] you on March 11, 2004, that triggered you to send
[19] this e-mail?
[20] A: I'm not certain she spoke with me on March
[21] 2000 — March 11th, 2004.
[22] Q: Okay. So it was either — it was prior to
[23] the time you sent the e-mail?
[24] A: Yes.

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[1] A: Not to my recollection.
[2] Q: I'm going to show you what was marked as
[3] Urban Deposition Exhibit 4.
[4] A: (Reviewing document)
[5] Q: And have you seen a copy of that letter
[6] before?
[7] A: Yes.
[8] Q: And that was given to Mr. Mistovich on
[9] March 30th, 2004; is that correct?
[10] A: Yes.
[11] Q: Excuse me one second. (Reviewing
[12] documents) I'm going to show you a copy of Nevero
[13] Deposition Exhibit 5.
[14] A: (Reviewing document)
[15] Q: Do you recognize that document or the
[16] contents of the document, Ms. Bowden?
[17] A: Yes, I've seen them before.
[18] Q: And the bottom section of it appears to be
[19] an e-mail from you to Alison Leaton —
[20] A: Uh-huh.
[21] Q: — dated March 11, 2004, 2:14 p.m.,
[22] correct?
[23] A: Yes.
[24] Q: Do you recall sending an e-mail to Ms.

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[1] Q: So you had a conversation with Ms. Leaton
[2] that resulted in you sending this e-mail?
[3] A: Yes.
[4] Q: Okay. Was it more than one conversation?
[5] A: Not to my recollection.
[6] Q: Was anyone else present during this
[7] conversation?
[8] A: Not to my recollection.
[9] Q: All right. And what did many Ms. Leaton
[10] say to you, and what do you recall you said to her?
[11] You don't have to recall the exact words?
[12] A: That she had concerns that Eli Mistovich
[13] was filtering candidates out based on their address,
[14] and that he was assuming they were black.
[15] Q: Okay. When you say "filtering candidates
[16] based on their address," are you referring to
[17] resumes?
[18] A: Yes.
[19] Q: And did she explain to you what the basis
[20] of that concern was?
[21] A: She had a particular resume of a candidate
[22] that on paper met all the established
[23] qualifications, and Eli wouldn't consider the
[24] person.

[1] Q: That's what she told you?
[2] A: Yes, essentially.
[3] Q: And then you recall anything else she said?
[4] A: Not specifically at that meeting point.
[5] Q: Did she identify the candidate she was
[6] referring to?
[7] A: Not to my recollection.
[8] Q: Did she show you a copy of the resume?
[9] A: Not at that time.
[10] Q: Did you see a copy of the resume she was
[11] talking about?
[12] A: Not to my recollection.
[13] Q: Do you recall the name of any candidate or
[14] candidates she was referring to?
[15] A: The candidate's name was Marvin Morgan.
[16] Q: I'm going to show you what was marked as
[17] Urban Exhibit 2.
[18] A: Okay.
[19] Q: Have you seen that — that was identified
[20] at Mr. Urban's deposition as the Morgan resume.
[21] A: Okay.
[22] Q: Have you seen that before?
[23] A: Yes.
[24] Q: Okay. Did you see it before the decision

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[1] probability of being black.
[2] Q: Ms. Leaton told you that's what Mr.
[3] Mistovich told her?
[4] A: Essentially, yes.
[5] Q: That he actually said, oh, that because
[6] he's from Dorchester, there's a high probability of
[7] him being black?
[8] A: Yes.
[9] Q: Okay. Is there anything — you looking at
[10] that resume, could you tell Mr. Morgan's race simply
[11] by looking at that resume?
[12] A: (Reviewing document) As a non-resident,
[13] I'm not familiar with the composition of the
[14] communities in the greater Boston area, so
[15] personally, no, I could not.
[16] Q: Okay.
[17] A: However, others familiar with the various
[18] compositions could make educated decisions.
[19] Q: You're saying a person from Dorchester,
[20] that another person looking at the resume would know
[21] that a person was black; is that what you're saying?
[22] MS. RUBIN: Objection.
[23] A: No, that's not what I said.
[24] Q: Okay. Maybe I misunderstood you. What is

[1] was made to terminate Mr. Mistovich?
[2] A: I don't know.
[3] Q: Okay. When — have you seen it prior to
[4] your deposition today?
[5] A: Yes.
[6] Q: Okay. Prior to the institution of this
[7] lawsuit, do you recall seeing the Morgan resume or a
[8] copy of it?
[9] A: I do not recall.
[10] Q: Okay. What is it about that resume that
[11] would suggest Mr. Morgan's race?
[12] A: To me? Or to...
[13] Q: I take it Ms. Leaton said that Mr.
[14] Mistovich was screening out black candidates because
[15] of addresses in a resume?
[16] A: Uh-huh.
[17] Q: Well, there was an address in Dorchester.
[18] Was it Ms. Leaton's contention that because Mr.
[19] Morgan was from Dorchester, that he was black? I'm
[20] trying to understand what her allegation was.
[21] A: It is the city address that Mr. Mistovich
[22] advised Ms. Leaton that he felt he had adequate
[23] knowledge of the composition of that group of people
[24] that lived there that this candidate had a higher

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[1] there about that address that you think anyone could
[2] make a determination of a person's race?
[3] A: Individuals in individual communities are
[4] made of a composition of people which is on record,
[5] and those familiar with the geographical area would
[6] know what the primary composition of a —
[7] Q: You mean the street address or Dorchester
[8] in general?
[9] A: A town or city in general, yes.
[10] Q: Do you know where Kevin Lydon lives?
[11] A: No, I do not.
[12] Q: Would it surprise you to learn, be advised,
[13] that he lives in Dorchester, Savin Hill?
[14] A: Not surprised by it.
[15] Q: Do you know — Mr. Lydon is white, is he
[16] not?
[17] A: Yes, he is.
[18] Q: So just so I'm clear. Ms. Lydon (sic) told
[19] you that Mr. Mistovich had informed her that because
[20] Mr. Morgan was from Dorchester, he made an
[21] assumption that he was black and did not want to
[22] hire him?
[23] A: Did not want to interview him.
[24] Q: Or did not want to interview him?

[1] A: Correct.
[2] Q: And those were Ms. Leaton's words?
[3] MS. RUBIN: Objection.
[4] A: No.
[5] Q: Okay. Well, maybe I misspoke. The
[6] statement that Morgan was probably black, did that,
[7] according to Ms. Leaton, did that come from Mr.
[8] Mistovich's lips?
[9] A: The phrase from — was that he had trouble
[10] with people like that, and when pressed, Ms. Leaton
[11] said, "What do you mean, black?" And he said,
[12] "Yes."
[13] Q: How did Ms. Leaton know he was black?
[14] MS. RUBIN: Objection.
[15] A: I don't know.
[16] Q: Well, do you know — Mr. Morgan was
[17] subsequently interviewed and hired, correct?
[18] A: That's my understanding.
[19] Q: Okay. And he is black; is that your
[20] understanding? Well, let me withdraw the question.
[21] Have you ever met Mr. Morgan?
[22] A: No.
[23] Q: Do you know what his race is?
[24] A: Yes.

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[1] Q: Okay. And on the top where Ms. Leaton was
[2] responding to you, she said, "The only conversation
[3] I had with Eli about whom to interview or not was
[4] late last week." So the discussion that she had
[5] with Eli Mistovich had occurred sometime prior to
[6] March 11th, correct?
[7] A: That's what she's written, yes.
[8] Q: Do you know when this conversation between
[9] Ms. Leaton and Mr. Mistovich occurred?
[10] MS. RUBIN: Do you mean now, or did she
[11] know on March 11th?
[12] Q: Do you know when the initial conversation
[13] occurred?
[14] A: Well, I learned later through further
[15] interviews with Ms. Leaton that it happened.
[16] Q: Well, do you know —
[17] A: On or about March 5th.
[18] Q: Okay. Now, she in this — did you see
[19] anywhere in this narration of the conversation where
[20] Mr. Eli or Mr. Mistovich actually makes the
[21] statement that Mr. Morgan was black? I mean, she
[22] refers to, in the third line, Mr. — Eli's
[23] assumption that he was black.
[24] A: Right. That's —

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[1] Q: Okay. Is he black?
[2] A: Yes.
[3] Q: Do you know where Ms. Leaton got Mr.
[4] Morgan's resume?
[5] A: No.
[6] Q: When you had this conversation with Ms.
[7] Leaton, did she indicate to you that she knew Mr.
[8] Morgan's race?
[9] A: She did not indicate to me that she knew
[10] Mr. Morgan's race.
[11] Q: Okay. Well, let's look at Exhibit 5. You
[12] asked Ms. Leaton for a detailed outline concerning
[13] the conversation she had with Mr. Mistovich,
[14] correct?
[15] A: Yes.
[16] Q: Okay. And then she responded to you in the
[17] top part of that?
[18] A: Yes.
[19] Q: Other than this e-mail response, do you
[20] recall receiving any other information from Ms.
[21] Leaton on March 11th?
[22] A: Receiving other information on March 11?
[23] Q: Yes.
[24] A: I do not recall that.

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[1] Q: Well, that's what Ms. Leaton says that Mr.
[2] Mistovich assumed?
[3] MS. RUBIN: Do you have a question? I'm
[4] sorry.
[5] Q: Yes. Do you see anywhere in there where
[6] there's a statement attributed to Mr. Mistovich that
[7] he considered Mr. Morgan to be black by race?
[8] A: So "in that conversation" is the phrase
[9] that implies that it's from Eli's assumption that he
[10] was black. It's in the same sentence.
[11] Q: So you construed that as Mr. Mistovich
[12] actually making a statement, Morgan was black, and
[13] he didn't want to hire him?
[14] A: He was under that assumption, yes.
[15] Q: Well, I didn't ask you what assumption he
[16] was — I'm just wondering your understanding of the
[17] statements that Mr. Mistovich made.
[18] MS. RUBIN: Objection.
[19] Q: I'm not asking anyone to be a mind reader.
[20] A: My understanding was that he wouldn't
[21] consider interviewing the individual because under
[22] the address he made the assumption he was black.
[23] Q: Then she says he was not happy about it and
[24] said, "He had not had good luck with people like

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[1] Q: And was that on or before March 15, 2004?
[2] A: Yes.
[3] Q: Okay. And did you communicate Ms. Leaton's concerns to Steven Nevero prior to March — either on or before March 15?
[4] A: I don't know.
[5] Q: Did you communicate Ms. Leaton's concerns to Mr. Urban on or before March 15, 2004?
[6] A: I don't know.
[7] Q: Okay. Now, as of March 15, had you communicated Ms. Leaton's concerns to Mr. Mistovich as of the date of the meeting?
[8] A: I don't recall doing it.
[9] Q: Okay. Do you recall if you took any notes of this meeting on March 15, 2004?
[10] A: I do not.
[11] Q: Why did you communicate Ms. Leaton's concerns to Beth Trowbridge?
[12] A: The recruiter was again reporting to Beth upon her return from her mat leave to bring her up to speed.
[13] Q: Did Ms. Leaton communicate her concerns to Ms. Trowbridge?
[14] A: No.

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[1] Q: And where did the meeting with Leaton and Trowbridge occur?
[2] A: In my office.
[3] Q: And was there anyone else present?
[4] A: No.
[5] Q: And what do you recall being said at the meeting?
[6] A: We asked Alison, well, to give further explanation on her concern and the process that she had gone through to date on this matter.
[7] Q: And what did Ms. Leaton say?
[8] A: She advised the sort of the protocol that she had taken when she had the initial communication and questions and concerns that had been raised in asking Mr. Mistovich for clarification of his intent, his comment; and we asked her to clarify whether or not there was any sense of misunderstanding on her part.
[9] Q: And what was her response?
[10] A: That it was very clear and there was no misunderstanding of what was intended by Mr. Mistovich's comments and actions.
[11] Q: Did she quote anything that Mr. Mistovich said?

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[1] Q: Oh, okay.
[2] A: And Beth subsequently participated in a meeting with Ms. Leaton and myself.
[3] Q: Okay. Was there a subsequent meeting between — after March 15th between you and Ms. Leaton —
[4] MS. RUBIN: Objection.
[5] Q: — and Ms. Trowbridge?
[6] A: There were meetings but the specific dates I don't have in my head.
[7] Q: Okay. Well, you referred to a meeting —
[8] A: Uh-huh.
[9] Q: — that you had with Beth Trowbridge and Alison Leaton, correct?
[10] A: Yes, I don't remember the exact date.
[11] Q: Was it after March 15, 2004?
[12] A: I don't remember the exact date.
[13] Q: Well, I'm trying to see if I can give you a framework to assist you. Was it before the March 26th meeting with Mr. Mistovich, Urban and Nevero?
[14] A: Yes.
[15] Q: Okay. And was there more than one meeting you had with Alison Leaton and Beth Trowbridge?
[16] A: Not that I can recall.

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[1] A: I don't know specifically at this time.
[2] Q: Okay. But she said to you there was no misunderstanding on her part that Mr. — of what Mr. Mistovich said and meant; is that correct?
[3] A: Yes, that's —
[4] Q: So there's no misunderstanding on Ms. Leaton's part that Mr. Mistovich said and meant to exclude blacks from the interview process?
[5] A: Correct.
[6] Q: Okay. Do you recall anything Beth Trowbridge said?
[7] A: Nothing. I recall nothing.
[8] Q: Now, you met with Mistovich, Urban and Nevero on March 26th, 2004, correct?
[9] A: Yes.
[10] Q: And what was the purpose of that meeting?
[11] Well, let me withdraw that question.
[12] Who decided to have a meeting on March 26th, 2004?
[13] A: I'm not sure I understand what you mean.
[14] Q: Well, there's a meeting. Mr. Mistovich, do you know when he was notified of the meeting?
[15] A: I do not remember.
[16] Q: I take it, it's fair to say it wasn't Mr.

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[1] A: Yes.
[2] Q: Let me show you another — what appears to
[3] be a set of e-mails produced by MBCR Bates stamped
[4] No. 5 and 6.
[5] A: (Reviewing document)
[6] Q: Do you recognize those e-mails, Ms. Bowden?
[7] A: Yes.
[8] Q: Now, it looks like, if you start on Page 6,
[9] there's a repetition of a previous e-mail we
[10] discussed?
[11] A: Yes.
[12] Q: Okay. By the way, in that e-mail that's —
[13] the last comment you made to Ms. Leaton is, "I need
[14] this" — that is her detailed outline — "by the
[15] close of business Friday by e-mail." Do you recall
[16] why you needed her detailed outline by the close of
[17] business — this is Friday, March 11th — so that
[18] would be Friday, March 12th?
[19] A: I do not recall.
[20] Q: Was this a concern of some urgency to you;
[21] do you recall?
[22] A: I do not recall. I do not recall why I
[23] asked for that specific...
[24] Q: Then on the first page of this — these

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[1] A: (Reviewing document)
[2] MR. TEAGUE: While you're looking, why
[3] don't we mark the series of e-mails that had the top
[4] e-mail of Tuesday, March, 16, 2004, at 9:28 p.m.,
[5] from Alison Leaton to Elizabeth Bowden and Elizabeth
[6] Trowbridge. I believe it would be Bowden Exhibit
[7] 29.
[8] (Document marked as Bowden
[9] Exhibit 29 for identification)
[10] Q: Okay. Now, the document stamped 2 and 3,
[11] do you recognize those, Ms. Bowden?
[12] A: Yes.
[13] Q: And what are those — what is that
[14] document?
[15] A: Summary of the meeting that was held on
[16] March 15 with Alison Leaton, Beth Trowbridge and
[17] myself.
[18] Q: Okay. And did you send a copy of this
[19] summary to Ms. Leaton?
[20] A: Yes.
[21] Q: Okay. And that's the document that's
[22] referred to in the middle e-mail on the first page
[23] of Exhibit 29?
[24] A: Yes.

[1] documents, there's a repeat of Ms. Leaton's e-mail
[2] to you of March 11th, and then above that, you
[3] e-mail her on March 15th at 8:26 p.m. "Please
[4] review attached. Have I captured the meeting
[5] correctly? Please review and advise Tuesday." When
[6] you say "attached," were you referring to her
[7] previous e-mail to you?
[8] A: No.
[9] Q: Was there something else that you were
[10] referring to?
[11] A: Yes.
[12] Q: What was that?
[13] A: An attachment of notes taken that was held,
[14] a meeting held between Beth and between Alison and
[15] I.
[16] Q: So you took notes of the meeting with Beth,
[17] Alison and you that you refer to, and you sent those
[18] to Ms. Leaton?
[19] A: Uh-huh.
[20] Q: Okay.
[21] A: Yes.
[22] Q: Let me show you another two documents that
[23] are Bates stamped 2 and 3 from MBCR production and
[24] ask you to take a look at that.

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[1] MR. TEAGUE: Okay. Why don't we have the
[2] summary of the March 15 meeting marked as — we'll
[3] call it "Bowden Exhibit 30."
[4] (Document marked as Bowden
[5] Exhibit 30 for identification)
[6] Q: Did you ever show Exhibit 30 to Eli
[7] Mistovich?
[8] A: Not to my knowledge.
[9] Q: Did you show it to the members of the team
[10] or committee, as you referred to them, Mr. Urban or
[11] Nevero or Lydon or counsel?
[12] A: I don't know.
[13] Q: Okay. Now, do you know who communicated to
[14] Mr. Mistovich that there would be a meeting on March
[15] 26th?
[16] A: I don't remember.
[17] Q: Do you recall having any communications
[18] with Mr. Mistovich prior to March 26th about the
[19] meeting?
[20] A: I don't recall.
[21] Q: Do you remember receiving any voice mail
[22] from Mr. Mistovich about the purpose of a meeting he
[23] was asked to attend on March 26th?
[24] A: I don't remember a voice mail.

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[1] Q: Now, when you and Elizabeth Trowbridge met
[2] with Alison Leaton on March 15th, did you inform Ms.
[3] Leaton of the purpose of that interview prior to
[4] March 15 or prior to the interview being conducted?
[5] A: I don't recall.
[6] Q: To your knowledge did either Mr. Nevero or
[7] Mr. Urban discuss the purpose of the meeting with
[8] Mr. Mistovich before March 26th?
[9] A: I have no knowledge of that.
[10] Q: Did you ever tell Mr. Nevero not to tell
[11] Mr. Mistovich the purpose of the meeting?
[12] A: Not to my knowledge.
[13] Q: Was there a reason you did not inform Mr.
[14] Mistovich of the purpose of the meeting prior to
[15] March 26th?
[16] A: It's standard practice during
[17] investigations to keep the primary details of the
[18] investigation confidential until the conducting of
[19] the face-to-face meetings.
[20] Q: Well, the details had been discussed with
[21] Ms. Leaton on at least two occasions and e-mailed
[22] back and forth; is that correct?
[23] A: From her knowledge of it, yes.
[24] Q: Yes. And Ms. Trowbridge was aware of it?

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[1] A: The guideline approach that's used to
[2] complete detailed investigations of this nature.
[3] Q: Is there a written guideline for conducting
[4] investigations as to —
[5] A: No.
[6] Q: — as to allegations of racial
[7] discrimination?
[8] A: Not to my knowledge.
[9] Q: Okay. What were you referring to when you
[10] said "guidelines"?
[11] A: It's best practice used within
[12] organizations to complete investigations.
[13] Q: This is your understanding of the practices
[14] that are used? In other words, is there any written
[15] document that says you shouldn't inform the subject
[16] of an investigation of the purpose of it prior to
[17] the interview?
[18] A: I'm not aware of a specific document.
[19] Q: Okay. Had you conducted any previous
[20] investigations, as you call them, of discrimination
[21] in hiring at MBCR?
[22] A: No.
[23] Q: Had you conducted any investigations of
[24] racial discrimination in hiring in any of the other

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[1] A: Yes.
[2] Q: And the members of the team, Mr. Davey, Mr.
[3] Leaton (sic), Mr. Nevero, Mr. Urban and you were
[4] aware of it, correct?
[5] A: Yes.
[6] Q: So the only one that wasn't aware of the
[7] purpose of the meeting and the allegations on March
[8] 26th to your knowledge was Mr. Mistovich; is that
[9] correct?
[10] MS. RUBIN: Objection.
[11] A: I don't know who else had knowledge.
[12] Q: I said do you know of anyone else — do you
[13] know if Mr. Mistovich had any advance knowledge of
[14] this meeting?
[15] A: I don't know.
[16] Q: Did anyone ever suggest that it might be
[17] fair to inform him in advance of the purpose of the
[18] meeting?
[19] A: As I said, it's practice of investigations
[20] of this nature that the substantive information is
[21] retained confidential until the time of the
[22] face-to-face meeting.
[23] Q: When you say "standard practice," where is
[24] that standard practice? What's the source of that?

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[1] organizations you were employed by?
[2] A: No.
[3] Q: Now, the meeting on March 26th, 2004, what
[4] room did that occur in?
[5] A: I don't know the name of it.
[6] Q: Was it a conference room?
[7] A: Yes.
[8] Q: Where was the location, the address?
[9] A: 33 Cobble Hill Road.
[10] Q: And did — do you recall who sat where at
[11] this meeting?
[12] A: Relative to what?
[13] Q: Well, were you sitting across from Mr.
[14] Mistovich?
[15] A: Not directly. Almost on the same angle
[16] that we are at this point in time now.
[17] Q: So Mr. Mistovich was on one side of the
[18] table; is that correct?
[19] A: (Nods head)
[20] Q: And you were on the other side of the
[21] table?
[22] A: Yes.
[23] Q: Were Mr. Nevero and Mr. Urban on your side
[24] of the table?

[1] A: No.
[2] Q: Were they on Mr. Mistovich's side of the table?
[3] A: Mr. Nevero was.
[4] Q: Okay. And where was Mr. Urban?
[5] A: At the head of the table.
[6] Q: So Nevero (sic) is at the head. You're across from Mr. Mistovich, and Mr. Nevero is sitting beside Mr. Mistovich; is that how people were seated?
[7] THE WITNESS: (To the stenographer) You may want to read back what he just said. I don't think he phrased it properly.
[8] Q: You were across a table from Mr. Mistovich, is that correct —
[9] A: Yes.
[10] Q: — at the meeting? Mr. Urban, the number two man in MBCR, was seated at the head of the table?
[11] A: Yes.
[12] Q: And then that left Mr. Nevero?
[13] A: Yes.
[14] Q: And where was he seated —
[15] A: On the same side —

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[1] A: Not to my knowledge.
[2] Q: And did you make handwritten notes of the meeting on which you based the summary?
[3] A: Yes.
[4] Q: And do you know where those notes are?
[5] A: No, I do not.
[6] Q: Okay. Now, the initial conversation between Leaton and Eli Mistovich that triggered this incident or this investigation occurred on March 4th or March 5th, correct?
[7] A: That is my understanding.
[8] Q: That was some three weeks before this meeting with Eli Mistovich, correct?
[9] A: Yes.
[10] Q: Okay. And then in Paragraph 3 of Exhibit 11 you indicate you made a statement. Do you see that?
[11] A: Uh-huh.
[12] Q: You recall making a statement to that effect?
[13] A: Yes.
[14] Q: And telling Mr. Mistovich the reason for the meeting; do you see that?
[15] A: Yes.

[1] Q: — in relation — let me finish the question — in relation to Mr. Mistovich?
[2] A: To Mr. Mistovich's right.
[3] Q: Okay. Did you ask Mr. Mistovich to bring any records or documents to the meeting with him?
[4] A: No.
[5] Q: Did you suggest that he take notes at the meeting?
[6] A: Not that I recall.
[7] Q: Did you take notes at the meeting?
[8] A: I did.
[9] Q: All right. Let me show you what we've marked at Mr. Mistovich's deposition as Exhibit 11.
[10] A: Okay. (Reviewing documents)
[11] Q: Do you recognize that document or those documents?
[12] A: Yes.
[13] Q: And what are those?
[14] A: The notes that I prepared in summary of the meeting held on March 26th.
[15] Q: And when did you prepare this document?
[16] A: March 26th.
[17] Q: Okay. Were — was the conversation with Mr. Mistovich recorded?

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[1] Q: Okay. Prior to that, I take it, you have no knowledge of anyone informing Mr. Mistovich of the purpose of the meeting?
[2] A: I have no knowledge, correct.
[3] Q: Now, in the next to last sentence of the third paragraph, the one I was just referring to, you refer to eliminating qualified "applicants" in the plural because of their name and their home address. Again, I'll ask you, at the meeting did you have any other applicant in mind other than Mr. Morgan that this had occurred to?
[4] A: No, I did not.
[5] Q: Did Mr. Mistovich appear surprised when you informed him of the purpose of the meeting?
[6] A: Not to my recollection.
[7] Q: It's fair to say you expected Mr. Mistovich to be surprised by this accusation, did you not?
[8] MS. RUBIN: Objection.
[9] A: No.
[10] Q: This is an accusation of racism, isn't it?
[11] A: Yes.
[12] Q: And you would not expect an employee to be surprised by an accusation of racism?
[13] MS. RUBIN: Objection.

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[1] A: We prepared a spreadsheet of the
[2] qualifications of those that had CDL.
[3] Q: When you say "we prepared the spreadsheet,"
[4] who prepared it?
[5] A: The Human Resources Department coordinated
[6] that.
[7] Q: Well, who prepared it? Ms. Leaton?
[8] A: Yes.
[9] Q: Oh, okay. The accuser prepared it?
[10] MS. RUBIN: Objection.
[11] Q: Correct?
[12] A: Yes.
[13] Q: The person who made the —
[14] A: Yes. I thought it was a statement, not a
[15] question.
[16] Q: Okay. Then you said Eli would not respond
[17] beyond this comment. I'm going back to your —
[18] A: What page, please?
[19] Q: Right where you're looking on Page 2,
[20] Question 3.
[21] A: Okay.
[22] Q: After —
[23] A: Yes.
[24] Q: — "This was not challenged." Did you ask

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[1] you're quoting from Ms. Leaton's version of the
[2] conversation that she had with Mr. Mistovich three
[3] weeks prior to your interview, correct?
[4] MS. RUBIN: Objection.
[5] A: Correct.
[6] Q: Okay. And did you expect him to recall the
[7] comments of Ms. Leaton at this meeting?
[8] MS. RUBIN: Objection.
[9] A: I'm sorry?
[10] Q: You're quoting — in Question 4 you're
[11] taking Ms. Leaton's version of a conversation and
[12] presenting it to Mr. Mistovich, correct?
[13] A: Correct.
[14] Q: And this conversation that Ms. Leaton had
[15] with Mr. Mistovich occurred three weeks prior to
[16] your talking to him?
[17] A: Yes.
[18] Q: Is it — and did you expect him to remember
[19] the exact content of the words that he said to Ms.
[20] Leaton some three weeks later when he had no advance
[21] notice of this meeting?
[22] MS. RUBIN: Objection.
[23] A: I did not expect him to remember his exact
[24] words.

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[1] him for any response? It says, "I always select the
[2] best or above-average candidates." And then you
[3] said, "The point of who got selected for interviews
[4] was." Did you anticipate a further response?
[5] A: I don't recollect the specifics.
[6] Q: Okay. Then in the next paragraph you said,
[7] "As Eli was not providing any information, E. Bowden
[8] stated that 'In the absence of comment from Eli, the
[9] information from the recruiter was considered
[10] accurate and without objection.'" Do you recall
[11] making that statement?
[12] A: I do recall making that statement.
[13] Q: And then Eli's response was, "It sounds
[14] like you've already made up your mind." You
[15] remember him saying that?
[16] A: Yes.
[17] Q: And then you said that, "No conclusions
[18] have been formed. That's the purpose of this
[19] meeting," and then you said, "Eli chose not to add
[20] anything more to the comment and not clarify any
[21] points." At this time point did he appear upset?
[22] A: I don't remember specifically.
[23] Q: Okay. Then on the next page, which is
[24] Bates stamped 11, you had another question. Again,

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[1] Q: For instance you said, "Your response was
[2] you had more problems with people like that. What
[3] did you mean by that statement?" And then you said,
[4] "No further comment be added after the original
[5] statement indicating he had, in fact, had problems."
[6] Then it says, "Eli stated that during the hiring
[7] requirements at his previous employer, he always
[8] exceeded the required number." Do you recall him
[9] making that statement?
[10] A: Yes.
[11] Q: And you knew his previous employer was
[12] Amtrak, correct?
[13] A: Yes.
[14] Q: What, if any, efforts did you make to
[15] validate Mr. — or verify Mr. Mistovich's hiring
[16] record at Amtrak?
[17] A: None.
[18] Q: What did you mean when it says, "This
[19] cannot be validated by MBCR"?

[20] A: Cannot practice to go to a prior employer
[21] to ask about someone's behaviors when completing an
[22] investigation at a current employer.
[23] Q: Yes, but this was — all of Amtrak's
[24] employees, including Mr. Mistovich, were

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[1] mean you would be a good railroad trackman; is that
[2] correct?
[3] **MS. RUBIN:** Objection.
[4] **A:** Correct.
[5] **Q:** Would you agree that someone with railroad
[6] experience and knowledge of a trackman's particular
[7] duties might look for specifics in a work history?
[8] **MS. RUBIN:** Objection.
[9] **A:** Might, yes.
[10] **Q:** Did you ever show this e-mail of March 26th
[11] to Mr. Mistovich for a comment?
[12] **A:** Not to my knowledge.
[13] **MR. TEAGUE:** Why don't we mark this e-mail
[14] from Ms. Leaton to Ms. Bowden of March 26th as
[15] Exhibit 32.
[16] (Document marked as Bowden
[17] Exhibit 32 for identification)
[18] **Q:** Was —
[19] **MR. TEAGUE:** Off the record.
[20] (Discussion off the record)
[21] **Q:** Let me show you a document that's been
[22] Bates stamped No. 25.
[23] **A:** (Reviewing document)
[24] **Q:** Can you identify that?

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[1] further to Mr. Mistovich?
[2] **A:** Not to my recollection.
[3] **Q:** Did anyone at the meeting suggest checking
[4] further with people who had worked with or under or
[5] above Mr. Mistovich at Amtrak?
[6] **A:** Not to my recollection.
[7] **Q:** At the March 30th meeting, I take it, you
[8] had this document, Nevero Exhibit 9?
[9] **MS. RUBIN:** Objection. You mean March
[10] 29th?
[11] **MR. TEAGUE:** What did I say?
[12] **Q:** March 29th meeting, you were referring to a
[13] summary, "Alison completing."
[14] **A:** Yes, that's what Rich had, yes.
[15] **Q:** Did you examine that at the meeting?
[16] **A:** I don't recall.
[17] **Q:** Okay. Were you — did anyone at the
[18] meeting refer to the fact that Mr. Mistovich had
[19] worked for Amtrak for more than 25 years before he
[20] came to MBCR?
[21] **A:** I'm not aware of that specific
[22] conversation.
[23] **Q:** Did anyone at the meeting bring up or
[24] mention that Mr. Mistovich had participated in

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[1] **A:** Yes.
[2] **Q:** And what is it?
[3] **A:** It's a section of my notebook that I keep
[4] when I go to meetings. It's dated March 29th. A
[5] meeting that was held in Kevin Lydon's office with
[6] Kevin, himself, Steve Nevero, Steve Urban, Rich
[7] Davey, and myself to follow up on the meeting we had
[8] had on the 26th.
[9] **Q:** And can you read the entries and tell me
[10] what you recall about what they mean?
[11] **A:** Kevin Lydon led the meeting and asked first
[12] Steve Nevero for his take on the meeting and the
[13] outcome of the meeting, and he summarized that he
[14] felt that Eli was evading answers. He asked —
[15] Kevin asked Steve Urban the same question. He gave
[16] the same answer as Steve Nevero. He asked me and I
[17] shared the summary notes that were previously
[18] highlighted here. Rich reviewed the summary
[19] document that Alison had prepared and was
[20] completing, and then Kevin had a conversation with
[21] the group regarding the discussion of releasing Eli
[22] from MBCR giving him the opportunity to resign if he
[23] chose or to be terminated.
[24] **Q:** Did anyone at the meeting suggest talking

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[1] hiring while he worked at Amtrak?
[2] **A:** I don't recall.
[3] **Q:** Other than Leaton's accusations and your
[4] summary of the meeting of March 26th, was there any
[5] other reason discussed for terminating Mr.
[6] Mistovich's employment at this March 29th meeting?
[7] **A:** I'm sorry. Can you restate that?
[8] **Q:** Sure. The March 29th meeting, you and
[9] Nevero and Urban, you summarized and gave your
[10] impressions of the meeting with Mr. Mistovich of
[11] March 26th, correct?
[12] **A:** Yes, I shared the notes.
[13] **Q:** Okay. And other than that incident, the
[14] Alison Leaton accusations and the meeting that you
[15] had concerning them, were there any other reasons
[16] discussed at the meeting for terminating Mr.
[17] Mistovich?
[18] **A:** No.
[19] **Q:** Now, do you recall a meeting on March 30th
[20] at the Cobble Hill facility with Mr. Mistovich?
[21] **A:** Is that the date of the termination?
[22] **Q:** Well, yes, that's the date of the
[23] termination letter.
[24] **A:** Okay.

[1] Q: Okay. You recall a meeting in which Mr.
[2] Mistovich was informed of the termination?
[3] A: Yes.
[4] Q: And who was present at that meeting?
[5] A: Steve Nevero, Steve Urban and myself, and
[6] Mr. Mistovich.
[7] Q: And at that meeting Mr. Mistovich was —
[8] what do you recall happening at that meeting? Why
[9] don't you tell me your recollection.
[10] A: Mr. Nevero led the meeting, and he outlined
[11] to Mr. Mistovich the outcome and decision of the
[12] details that had transpired over the previous few
[13] weeks and advised Mr. Mistovich that his employment
[14] with MBCR was being terminated and that he had two
[15] choices: he could resign or be terminated by the
[16] company. Mr. Mistovich was very, you know,
[17] surprised and upset. He inquired on whether he
[18] could stay involved in the organization employed,
[19] involved, however, not be involved in hiring, and
[20] Mr. Urban — I'm sorry — Mr. Nevero, I apologize —
[21] Mr. Nevero, again, leading the meeting, advised him
[22] that that was not an option. Mr. Mistovich inquired
[23] on whether he would be given a chance to think about
[24] the two choices that had just been presented to him,

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[1] A: No, I was not.
[2] Q: Was any severance pay offered to Mr.
[3] Mistovich?
[4] A: Not to my knowledge.
[5] Q: When did Alison Leaton cease working as a
[6] consultant for MBCR?
[7] A: I don't know exactly.
[8] Q: Was it before you resigned in July of 2005?
[9] A: Yes.
[10] Q: And was someone else hired as a contract
[11] recruiter?
[12] A: Yes.
[13] Q: And what, if any, complaints did you
[14] receive from MBCR hiring managers about Alison
[15] Leaton prior to the termination of her contract?
[16] A: None to my knowledge.
[17] Q: Do you know why or have an understanding of
[18] the reason why she ceased working as a contractor
[19] for MBCR?
[20] A: Her contract — and I don't have the exact
[21] dates — but the length of the agreement, as I had
[22] previously advised, we expected this whole process
[23] to be temporary, short term, but we did want a
[24] commitment from the person in the position that they

[1] and he was advised that he had to decide then; and
[2] he was not prepared to resign, and Mr. Nevero
[3] proceeded to then advise him that he would be
[4] terminated effective immediately. There was a
[5] reasonable silence in the room. Mr. Mistovich asked
[6] a question that I cannot remember at this point, but
[7] Mr. Urban responded, and then Mr. Urban escorted Mr.
[8] Mistovich out.

[9] Q: Was the decision to terminate Mr. Mistovich
[10] made at the March 29th meeting that we previously
[11] discussed?

[12] A: The decision to end his employment with
[13] MBCR was made then. So he was given the choice of
[14] whether to resign or to be terminated, but releasing
[15] him from employment from MBCR was decided at this
[16] meeting on the 29th.

[17] Q: Did anyone at the meeting of March 29th
[18] suggest a, perhaps, less drastic sanction —

[19] A: Not that I —

[20] Q: — than terminating an employee?

[21] A: Sorry. Not that I recall.

[22] Q: Were you aware that Mr. Mistovich on March
[23] 30th, 2004, had four children, two of whom were in
[24] college?

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[1] wouldn't leave us two or three weeks into the
[2] project, so we had an understanding of some number
[3] of months, three, four, six, some number that she
[4] would agree to stay.
[5] So as that began to wind down, she said,
[6] "Look, I have to look for another job." We said,
[7] "Great. We understand that." So it was kind of a
[8] combination of she was very close with interviews
[9] and so on and giving a lot of indication that she
[10] was imminent to have a job and would give us only,
[11] of course, two weeks notice, which would be great,
[12] but we needed to get another contract recruiter in.
[13] So it ended up that we happened to find a
[14] contract recruiter, and we did a two —
[15] approximately two-week transition with Alison and
[16] the other recruiter. It was very amicable. And
[17] then Alison transitioned out, and the other
[18] recruiter then continued in the contract capacity.
[19] Q: Do you know where she went to work after
[20] MBCR?
[21] A: Alison?
[22] Q: Yes.
[23] A: No, I do not.
[24] Q: When was the last time you spoke to Alison